

**ORIGINAL**Decision No. 59229

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of PHILIP POGGI,  
doing business as PHIL POGGI TRUCK-  
ING.

Case No. 6279

Philip Poggi for himself, respondent.  
Edward G. Fraser for the Commission staff.

O P I N I O N

This Commission, on June 8, 1959, issued an order of investigation into the operations, rates and practices of Philip Poggi, doing business as Phil Poggi Trucking, who is engaged in the business of transporting livestock over the public highways for compensation as a radial highway common carrier and a highway contract carrier. Pursuant to said order, public hearings were held on August 18, 1959 at San Diego before Examiner Wilson E. Cline, at which time evidence was presented and the matter was taken under submission.

Purpose of Investigation

The purpose of this investigation is to determine whether respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code of this State by charging, demanding, collecting or receiving lesser compensation for the transportation of livestock than the applicable charges prescribed by Minimum Rate Tariff No. 3-A and by failing to adhere to the provisions of said tariff, particularly Items Nos. 11, 60, 130, 140, 150 and 170 thereof, all as more specifically set forth in the said order instituting investigation.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

Respondent is engaged in the business of transporting livestock over the public highways for compensation as a radial highway common carrier and a highway contract carrier.

All applicable minimum rate orders were served upon respondent prior to the undercharges hereinafter noted.

Respondent's freight bill No. 4822, dated December 31, 1957, should be revised to show that 32 head of calves instead of 32 head of cattle were transported for Orita Land & Cattle. The resulting undercharge amounts to \$15.00 instead of \$58.00 as shown on Exhibit No. 7.

Respondent assessed and collected other charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 3-A which resulted in additional undercharges as follows (from Exhibits Nos. 6 and 7):

<u>Respondent's Freight Bill Number</u>	<u>Date</u>	<u>Amount of Undercharge</u>
4767	1/12/58	\$ 86.02
5046	3/9/58	78.04
4893	3/22/58	4.96
5171	3/22/58	5.60
5631	4/12/58	19.80
5602	4/26/58	39.22
5603	4/26/58	39.85
5735	5/3/58	7.73
5619	5/6/58	25.06
5826	5/9/58	13.07
5719	5/9/58	14.81
5766	5/9/58	13.95
5622	5/9/58	12.35
5742	5/9/58	14.16
5944	6/3/58	6.47
5432	6/24/58	35.28
5786	6/30/58	3.00
4421	11/2/57	3.00

The total undercharges amount to \$437.37.

In the performance of various transportation services hereinabove set forth and as more particularly appearing in Exhibits Nos. 6 and 7 of record herein, respondent has violated or failed to comply with the provisions of Minimum Rate Tariff No. 3-A in that he (1) failed in some instances to obtain a public weighmaster's certificate and properly to notify the Secretary of this Commission as provided in Item 130, and in said cases failed to base charges as provided in Items 150 and 140; (2) failed to rate shipments separately as provided in Item 60; and (3) failed to rate split pick-up shipments in accordance with the provisions of Items 11 and 170.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code, and the provisions and requirements of certain items of Minimum Rate Tariff No. 3-A as set forth in the preceding paragraph, makes its order as follows:

O R D E R

Public hearings having been held and the Commission basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. All operating authority of Philip Poggi be, and it is suspended for a period of five consecutive days commencing at 12:01 a.m. on the second Monday after the effective date of this order.

2. Respondent shall post at its terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that his radial highway common carrier permit and his highway contract carrier permit have been suspended by the Commission for a period of five days; that within five days after such posting, respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. Respondent shall examine its records for the period from July 1, 1958 to the present for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in the decision.

4. Respondent shall take such action as may be necessary to collect undercharges, both those set forth in the foregoing opinion and those, if any, found during the examination ordered by paragraph 3 of this order.

5. Within ninety days after the effective date of this order, respondent shall report in writing to this Commission the undercharges, if any, found as a result of the examination ordered by paragraph 3 of this order and the results of its efforts to collect undercharges as required by paragraph 4 hereof. Thereafter, respondent shall submit, in writing, on the first Monday of each month, a report of undercharges remaining to be collected and the action taken to collect such charges, until such charges have been collected in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made on respondent and this order shall be effective twenty days after the completion of such service.

Dated at Los Angeles, California, this 3<sup>rd</sup>  
day of November, 1959.

Ernest R. Page  
President  
W. L. Ketchum  
W. L. Ketchum  
E. L. Ketchum  
Theodore J. Gerner  
Commissioners